



SENATE BILL 279: Estates/Trusts/Guardianship Amendments

2013-2014 General Assembly

Committee: Senate Judiciary I
Introduced by: Sens. Hartsell, Barringer
Analysis of: PCS to First Edition
S279-CSTG-29

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SUMMARY: *The PCS to Senate Bill 279 makes various updates and clarifications to the laws governing wills and estates, trusts, and guardianship. The PCS deletes Part I of the original bill relating to protection of rights to digital assets, makes technical corrections to G.S. 28A-18-2 in Section 1.(a), clarifies trustee powers in Section 2.(c), and updates the NC Investment Advisers Act in Section 3.(f)-(h).*

BILL ANALYSIS:

Section 1.(a) makes technical corrections to the wrongful death statute as recommended by the General Statutes Commission.

Section 1.(b) and 1.(c) clarify that the procedure for providing a notice to creditors without opening a full estate administration is available if the decedent died owning only real property and did not devise the property to the estate's Personal Representative, and permit this type of notice to be used in more situations.

Section 1.(d) revises the formula used to determine a surviving spouse's elective share, which is the minimum amount a surviving spouse is entitled to receive from the estate of the deceased spouse. Under the new formula, the spouse's elective share will vary in proportion to the length of the marriage, whereas under current law, it is based on the number of children the decedent had and is reduced by half if the surviving spouse was not the first spouse of the decedent and the decedent had children, but not with the surviving spouse.

Section 1.(e) provides when a surviving spouse who applies for a year's allowance for maintenance and support under G.S. 30-31 is awarded costs, including reasonable attorney's fees, under G.S. 6-21(1), these fees may be charged as an administrative expense of the estate.

Sections 1.(f), 1.(g) and 1.(h) eliminates the current requirement that out-of-state wills be substantially in the form required by North Carolina law to be admitted to probate, even if they are notarized and certified in order to be "self-proving;" instead, the bill would admit them to probate if they are executed in compliance with NC law or with the law of the place where the will was executed or where the testator was domiciled when the will was executed. In addition, the bill clarifies that a self-proved military will that meets federal requirements must be admitted to probate in North Carolina.

Section 2.(a) adopts provisions in the Uniform Laws Commission Model Act's "Insurable Interest Amendments to the Uniform Trust Code" to make it clear that a trust has an insurable interest in the life of the settlor who created the trust.

Section 2.(b) clarifies that if a settlor creates a trust for the benefit of the settlor's spouse and makes it irrevocable even in the event of divorce, the term "settlor's spouse" as used in the trust refers to the



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person to whom the settlor was married at the time the trust was created, even if that marriage is subsequently dissolved.

Section 2.(c) authorizes a trustee to treat discretionary distributions made to the beneficiary as having been made from capital gains realized during the year.

Section 2.(d) clarifies that limitations on a trustee's power to distribute property from one trust to another if the distribution would reduce a beneficiary's interest in the original trust apply only if that interest has come into effect.

Section 3.(a) clarifies that inherited IRA assets are exempt from creditors' claims.

Section 3.(b) amends G.S. 32-72 to adapt the provisions in the Uniform Trust Code provisions relating to directed trustees in a manner appropriate for fiduciaries other than trustees under G.S. 32-72.

Sections 3.(c) – 3.(e) expand the power of a guardian for an incompetent ward to make gifts of principal and to modify the ward's estate plan to incorporate tax and public benefits planning.

Sections 3.(f) – 3.(h) amend the North Carolina Investment Advisers Act to continue some exemptions from registration requirements for offices maintained by high net worth families under the "private advisor" exemption for fewer than 15 clients to changes in federal law governing investment advisers, as recommended by the NC Bar Association's Business Law Section and the Securities Division of the Secretary of State's office.

Section 4 authorizes the Revisor of Statutes to include comments of the drafters of this act and all relevant portions of the Official Comments to the North Carolina Uniform Trust Code.

EFFECTIVE DATE:

BACKGROUND: